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No. 93-1636

In the Supreme Court of the United States

OCTOBER TERM, 1994

TOM SWINT, ET AL., PETITIONERS

v.

CHAMBERS COUNTY COMMISSION, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONERS

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QUESTION PRESENTED

Whether the sheriff of Chambers County, Alabama, is a final policymaker for the county in matters of law enforcement for purposes of county liability under 42 U.S.C. 1983.

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INTEREST OF THE UNITED STATES

The statute the Court is called upon to construe in this case—42 U.S.C. 1983—is the basic federal statute providing civil remedies for deprivations of federal rights by state and local officials. The United States has a strong interest in ensuring that this statute is interpreted with adequate breadth to serve its intended purpose. Private parties suing under Section 1983 to enforce federal rights "act not only on their own behalf, but also 'as private attorneys general in vindicating a policy that Congress considered to be of the highest priority.'" Cf. *Trafficante* v. *Metropolitan Life Ins. Co.*, 409 U.S. 205, 211 (1972). In addition, the United States, acting through the

Department of Justice, has been given a direct role in the enforcement of Fourteenth Amendment rights. As an important participant in civil rights enforcement, the government has an interest in the effectiveness of the entire congressional plan.

STATEMENT

This case arises out of two law enforcement raids on the Capri Club, a nightclub located in Chambers County, Alabama.[1] Pet. App. 3a. Petitioners are the two owners of the Club, each of whom was present during one of the raids, an employee of the Club who was present during both raids, and a patron of the Club who was present during the second raid. Pet. App. 45a, 52a-53a.

The first raid occurred on December 14, 1990. It was based on the recommendation of a Chamber County Sheriff's investigator who had participated in a preliminary investigation by the sheriff's department of alleged narcotics transactions at the Club. Pet. App. 4a. That investigation had been prompted by complaints to the sheriff's department of drug transactions at the Club. The Chambers County Sheriff "approved the narcotics investigation and operation at the Club." *Ibid.* The sheriff's investigator apparently devised the plan for the raid. *Ibid.* No warrant to search the Club or to seize or arrest any of its occupants was obtained. Pet. App. 19a.

An undercover officer and a confidential informant entered the Club on December 14, and the officer purchased marijuana and cocaine from a patron at the club. After the transaction, the officer left the Club and signaled to other officers, who had been watching, to begin the raid. Pet. App. 4a-5a.

[1] The case comes to the Court from the court of appeals' ruling on respondent's pretrial motion for summary judgment. Thus, the record does not contain findings of fact and this statement is based on the facts as alleged by petitioners and relied on by the courts below.

A S.W.A.T. team entered first. They were dressed in black, some members wore ski masks and they carried shotguns. Pet. App. 47a. After the team entered, approximately 20 to 30 additional law enforcement officers followed.[2] Within minutes of the entry, the officers identified and arrested the person who had sold the narcotics to the undercover officer. The only other person arrested during the raid was that person's brother, a minor, who possessed some of the marked money used by the undercover officer to buy the narcotics. Pet. App. 5a-6a. The officers nonetheless proceeded to search throughout the club, including the cash register, door receipts and liquor, and to detain dozens of citizens at gunpoint for an extended period of time. Pet. App. 5a, 17a. They seized some currency and some illegal liquor.

During the course of the raid, the officers pointed their guns at petitioners Tony Spradley and Drecilla James and other people in the club. The officers prohibited the people in the club from moving or leaving until the raid was over—a period of approximately one to one and one-half hours. Pet. App. 5a. When one patron asked to go to the restroom, an

[2] Participating in the raid were members of the Chambers County Drug Task Force, including 30 to 40 officers from the Chambers County Sheriff's Department, the police departments of the Cities of Wadley, Lafayette, Lanett, and Valley, Alabama, and an employee of the Alabama Alcoholic Beverage Control Board. Pet. App. 2a, 4a, 47a. The Chambers County Sheriff deputized officers from outside the county so that they could participate. Pet. App. 7a, 49a.

officer told him to "Shut up, or I'll shut you up myself." *Ibid.* When petitioner James stated that she was so scared that she had to go to the restroom, she was told "no" by one officer. When she asked another officer for permission to use the Club restroom facilities, that officer told her that she would have to go behind the building. *Ibid.*

The Chambers County Sheriff did not personally participate in the raid, but was debriefed following the first raid as to how the raid had been conducted. Pet. App. 23a. The Chambers County Sheriff's Department received additional narcotics-related complaints after the December 14 raid. The sheriff directed the sheriff's investigator to determine whether a second operation was required. The investigator recommended another operation and the Chambers County Sheriff authorized it. Pet. App. 6a. Again, no search or arrest warrants were obtained prior to the raid.

The second raid was conducted on March 29, 1991. The procedure followed was similar to that followed during the December 14 raid. This time the law enforcement officers chambered rounds of ammunition into their firearms, pointed them at people in the club and ordered them to get down on the floor. The officials searched some of the people in the Club, including petitioner Jerome Lewis. During their search of Lewis, law enforcement officials pushed him outside the Club and shoved him against a wall. Pet. App. 6a. After Lewis was searched, the officials forced him to go back into the Club until after the raid was concluded. At one point, an officer, "with his finger on the trigger, pointed a shotgun at Lewis' face." *Ibid.* The law enforcement officials pushed another patron off a bar stool. The officials

held guns on some of the employees, including petitioner James. This raid also lasted from one to one and one-half hours. The officials made no arrests during or as a result of this raid. *Ibid.* During one of the two raids, an officer said that they would keep coming back until the Club was closed. Pet. App. 7a.

Petitioners brought this action in federal district court seeking declaratory, injunctive and compensatory relief. The complaint included both state and federal causes of action, and raised claims under 42 U.S.C. 1983, alleging that respondents had violated petitioners' rights under the Fourth, Fifth, Sixth, and Fourteenth Amendments. Pet. App. 7a, 46a & n.1. Petitioners contended that the raids were racially motivated and were not supported by either an arrest warrant or a search warrant. Pet. App. 46a. The defendants named below were the Sheriff of Chambers County, the Chambers County Commission, the City of Wadley, the Police Chief of Wadley, and an individual Wadley police officer. Pet. App. 1a. All the petitioners are black and all the defendants are white. The defendants filed motions to dismiss and for summary judgment which the district court granted in part and denied in part.

The issue presented for this Court's review is the ruling on the Chambers County Commission's motion for summary judgment. The district court denied that motion. It concluded that the county government was not entitled to summary judgment because the sheriff "as the chief law enforcement officer for the county, may have been the final policy maker for the County in making his decision to approve the allegedly illegal raids." Pet. App. 67a, citing *Pembaur* v. *City of Cincinnati*, 475 U.S. 469, 481-484 & n.10 (1986); and *Parker* v. *Williams*, 862 F.2d 1471, 1477-

1481 (11th Cir. 1989). The court noted that under Alabama Code § 36-22-3(4) (1991), the county sheriff had to deputize officials from outside the county before they could participate in the raid, that the sheriff's duty is to ferret out crime and apprehend and arrest criminals in the county, and that the county commission must furnish him with the equipment necessary for that purpose. *Id.* § 36-22-18. The court also concluded that although the sheriff is a state employee, the sheriff "may have been the final decision-maker for the County in ferreting out crime." Pet. App. 67a, citing *Parker* v. *Williams*, 862 F.2d at 1475.[3]

In its ruling on the defendants' motions to reconsider, the district court further stated that whether the sheriff was the final policy maker for the county was a question of law and thus far it had determined

[3] In *Parker* v. *Williams*, the Eleventh Circuit certified to the Alabama Supreme Court the question whether a county sheriff may be considered a county employee "for purposes of imposing liability on the county under a theory of respondeat superior." 862 F.2d at 1474. The state court answered the question in the negative. *Ibid.*; *Parker* v. *Amerson*, 519 So. 2d 442 (Ala. 1987). The court explained that the state constitution placed sheriffs in the "executive department" thereby rendering them officers of the state. *Parker* v. *Amerson*, 519 So. 2d at 443. Based on that ruling and the state court's analysis of other provisions of state law, the Eleventh Circuit held in *Parker* v. *Williams*, that the state law claims against the sheriff and county were barred. For purposes of the Section 1983 action against the county in *Parker* v. *Williams*, however, the Eleventh Circuit found that the label of "state official" was not dispositive and it held that the county was liable for the sheriff's actions because he was exercising county power with final authority. 862 F.2d at 1478-1479.

that the "[p]laintiffs had come forward with sufficient evidence to persuade this Court that Sheriff Morgan may be the final policy maker for the County. The parties will have an opportunity to convince this Court that Sheriff Morgan was or was not the final policy maker for the County, and the Court will make a ruling as a matter of law on that issue before the case goes to the jury." Pet. App. 72a.

The court of appeals reversed. See Pet. App. 1a-40a.[4] The court acknowledged that the county government "may be subjected to § 1983 liability * * * for the acts of an official who 'possesses final authority to establish municipal policy with respect to the action ordered.' " Pet. App. 31a, quoting *Pembaur*, 475 U.S. at 481. As had the district court, the court of appeals noted that the Alabama Supreme Court had held that "[a] sheriff is not an employee of a county for purposes of imposing liability on the county under a theory of respondeat superior." Pet. App. 32a, quoting *Parker* v. *Amerson*, 519 So. 2d 442, 442 (Ala. 1987); see note 3, *supra*. The court of appeals acknowledged, however, in agreement with the district court, that that holding, in the context of a respondeat superior ruling, was not dispositive on the question of the county's Section 1983 liability. The court of appeals stated, "the fact that an Alabama sheriff 'works' for the state does not

[4] The case is before the Court as an interlocutory appeal because certain individual defendants appealed the denial of their motions for summary judgment on qualified immunity grounds. The court of appeals exercised jurisdiction over the appeal pursuant to *Mitchell* v. *Forsyth*, 472 U.S. 511 (1985), and exercised its pendent jurisdiction over the County Commission's interlocutory appeal of the summary judgment ruling. Pet. App. 28a-31a.

answer the question of whose policy he implements when he takes action." Pet. App. 33a, citing *Parker* v. *Williams*, 862 F.2d at 1478. Section 1983 liability, the court of appeals held, depends on whether the sheriff " 'was exercising county power with final authority' when he authorized the law enforcement raids in this case." Pet. App. 33a, quoting *Parker* v. *Williams*, 862 F.2d at 1478.

The court of appeals then proceeded to reverse the district court's denial of the county's summary judgment motion, not because the sheriff failed to meet the criteria for exercising final policymaking authority, however, but because of the court's conclusion that Alabama counties have no law enforcement authority. Pet. App. 33a. The court reached this conclusion based on one state statutory provision specifically imposing such authority on sheriffs and the fact that the court was not presented with any state statute or decision specifying that Alabama counties and their governing commissions have law enforcement authority or duties. *Ibid.* The court concluded that "because the State has not assigned the counties any law enforcement authority, the sheriff is not exercising county power when he authorizes a raid on suspected criminal activity within his county." Pet. App. 33a-34a.

SUMMARY OF ARGUMENT

The court of appeals erred in ruling that the Chambers County Commission could not be held liable for unconstitutional law enforcement practices of the county's sheriff. Local government entities are liable, under Section 1983, for unconstitutional conduct of officials of the entity who have final policymaking authority over the subject matter in question. *Pembaur* v. *City of Cincinnati*, 475 U.S. at 483-484 (plurality opinion). To determine where policymaking authority lies for these purposes, a trial court must look to state and local statutory and decisional law, as well as to custom or usage having the force of law, and identify the officials or government bodies that have final policymaking authority in regard to the particular action challenged. *Jett* v. *Dallas Indep. School Dist.*, 491 U.S. 701, 737 (1989); *City of St. Louis* v. *Praprotnik*, 485 U.S. 112 (1988) (plurality opinion). Review of Alabama law demonstrates that the Chambers County Sheriff has that policymaking authority in regard to the county law enforcement activities challenged by petitioners. Because the county is required by state law to pay the sheriff and to fund all the operations of the sheriff's office, it is also clear that the county government is properly viewed as having authority in regard to county law enforcement activities for purposes of Section 1983. The court of appeals therefore erred in concluding that the county could not be held liable for the sheriff's unconstitutional exercise of his authority in this case.

ARGUMENT

THE COURT OF APPEALS ERRED IN CONCLUDING THAT THE COUNTY GOVERNMENT WAS ENTITLED TO SUMMARY JUDGMENT

A. Counties and other local governmental units are liable under 42 U.S.C. 1983 when they commit a constitutional tort through unconstitutional action by an official of the unit who has final authority by virtue of state law or custom to establish the governmental unit's policy with regard to the action challenged

Local governmental bodies are "included among those persons to whom § 1983 applies." *Monell* v. *New York City Dep't of Social Services*, 436 U.S. 658, 690 (1978).[5] Local governments therefore may be sued under Section 1983 for monetary, declaratory or injunctive relief when they commit a constitutional tort. *Ibid.* A local government is liable only when it has committed the constitutional violation, however, and not merely because one of its employees commits such a violation. *Pembaur* v. *City of Cincinnati*, 475 U.S. at 478-479. The Court has emphasized that a government is responsible under Section 1983 when the injury alleged is inflicted by "execution of [the] government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy[.]"

[5] Section 1983 provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State * * * subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. * * *

Monell, 436 U.S. at 694. A government may be liable for a single decision by an official if the official is "the official or [one of the] officials responsible for establishing final policy with respect to the subject matter in question." *Pembaur*, 475 U.S. at 483-484 (plurality opinion). An official can derive his authority to make final policy decisions from legislation, from formal delegation from another official or entity, or from custom or usage. See, *Praprotnik*, 485 U.S. at 124 & n.1.

Two decisions of the Court since *Pembaur* have described the method by which a court should determine whether final authority to make municipal policy is vested in a particular official. In *Jett* v. *Dallas Indep. School Dist.*, 491 U.S. 701, 737 (1989), a majority of the Court reaffirmed the analysis set forth in the earlier plurality opinion in *City of St. Louis* v. *Praprotnik*, 485 U.S. 112, 125 (1988). In *Praprotnik*, the Court "attempted a clarification of tools a federal court should employ in determining where policymaking authority lies for purposes of § 1983." *Jett*, 491 U.S. at 737. The Court there reaffirmed that the matter is a question of state law to be determined by the trial court before a case is submitted to the jury. *Ibid.* The trial court must review "the relevant legal materials, including state and local positive law, as well as 'custom or usage having the force of law,'" and thereby "identify those officials or governmental bodies who speak with final policymaking authority for the local governmental actor concerning the action alleged to have caused the particular constitutional or statutory violation at issue." *Ibid.*, quoting in part *Praprotnik*, 485 U.S. at 124 n.1. Once that identification is made, the factfinder must determine whether the decisions

of the policymaking authority caused the deprivation of rights at issue either by commanding that action occur or by acquiescing in a longstanding practice or custom of the local government. *Jett*, 491 U.S. at 737.

B. Examination of relevant state law demonstrates that the Chambers County Sheriff had final policymaking authority concerning the county law enforcement activities alleged to have caused the constitutional violations in this case

The court of appeals incorrectly applied the *Jett* and *Praprotnik* standard in determining who speaks with final policymaking authority for Chambers County concerning county law enforcement activities. The court of appeals correctly cited those cases as requiring it to look to state law to resolve the issue. Pet. App. 32a. The court did not fully examine relevant state statutes and practices, however, and instead focused on one state statutory provision imposing law enforcement duties on sheriffs (Ala. Code § 36-22-3(4) (1991)). The court concluded that, because there is no similar state statute or decision expressly imposing specified law enforcement duties on counties, the county did not have any law enforcement duties or authority. The court reasoned that the county therefore was not in a law enforcement "partnership" with the sheriff and not liable for the sheriff's law enforcement actions under Section 1983. Pet. App. 33a.

In reaching this conclusion, the court of appeals relied on its prior decision in *Parker* v. *Williams*, 862 F.2d 1471, 1478 (1989). In that case, the court of appeals had conducted a broad review of state law along the lines suggested by *Praprotnik* and *Jett*, and concluded that the county *was* liable for an Alabama

sheriff's actions in running the county jail and in related hiring decisions. The court of appeals acknowledged that in *Parker* v. *Williams*, it had held that the Alabama Supreme Court's ruling that an Alabama sheriff is not an employee of the county "for purposes of imposing liability on the county under a theory of respondeat superior," is not dispositive of the issue of final policymaking authority for purposes of Section 1983 liability. Pet. App. 32a, quoting *Parker* v. *Amerson*, 519 So. 2d at 442; see note 3, *supra*. The court of appeals noted that in *Parker* v. *Williams*, it had held that "the fact that an Alabama sheriff 'works' for the state does not answer the question of whose policy he implements when he takes action." Pet. App. 33a. As the court of appeals recognized, "*Parker* teaches that '[t]he pivotal point is whether [the sheriff] was exercising county power with final authority.'" *Ibid.* Such an analysis in the present case demonstrates that Alabama law imposes on counties authority over and responsibilities for law enforcement similar to the authority and responsibilities present in *Parker* v. *Williams*, and that state law gives the county sheriff final policymaking authority in regard to county law enforcement practices.

1. Under Alabama law, counties have duties and responsibilities in regard to law enforcement by the county sheriff

Alabama law clearly places the financial responsibility for a county sheriff's law enforcement activities on the county government. Under Alabama law, a county is thus obligated to compensate the county's sheriff by a designated annual salary paid "out of the county treasury as the salaries of other county

employees are paid." Ala. Code § 36-22-16(a) (1991). Cf. *Parker* v. *Williams*, 862 F.2d at 1479 (county must appropriate funds for maintenance of jail). Not only does state law thus expressly characterize the sheriff as a county employee, it makes clear that the county must financially support its sheriff and has the authority to provide a higher salary "by law by general or local act." Ala. Code § 36-22-16(a) (1991). Alabama law also compels the county commission to "furnish the sheriff with the necessary quarters, books, stationery, office equipment, supplies, postage and other conveniences and equipment, including automobiles and necessary repairs, maintenance and all expenses incidental thereto, as are reasonably needed for the proper and efficient conduct of the affairs of the sheriff's office." *Id.* § 36-22-18. State law further compels the county to pay for any special investigations by the sheriff and requires the county to audit the sheriff's request for such funding. *Id.* § 36-22-6(a). In addition, state law authorizes the county commission to pay from the county's general fund "all dues, fees and expenses of the sheriffs * * * that are incurred by such individuals through membership in and/or attendance at official functions of their state organizations," and its sheriff's membership dues in state and national sheriffs' associations. *Id.* §§ 11-1-11, 36-22-19.[6]

With respect to revenues, Alabama law provides that the county commission is to collect various fees

[6] In addition to being compelled to pay the salary of the sheriff and to fund fully all the necessary expenses of the operations of the sheriff's office, certain counties are required by state law to administer a retirement system for the sheriff through the county general fund. See Ala. Code §§ 36-22-40 to 36-22-45 (1991).

and commissions that were previously collectible "for the use of the sheriff and his deputies," and pay them into the county's general fund. Ala. Code § 36-22-17 (1991). The county commission also has the authority to direct that the sheriff pay to the county's general fund the amounts received for feeding prisoners, which the sheriff is entitled to retain absent such direction by the county commission. *Ibid.* The sheriff must render to the county treasury or custodian of county funds a periodic written statement of the moneys received by him for the county. *Id.* § 36-22-3(3).

Alabama law also provides that the county voters elect the sheriff, Ala. Const. Art. V, § 138. Those voters thus have the ultimate capacity to control the sheriff's activities. See *Parker* v. *Williams*, 862 F.2d at 1481 n.10. In addition, citizens of the county have direct authority to require that the county sheriff make an investigation and report regarding any alleged violations of the law in the county. Ala. Code § 36-22-6(b) (1991). Under this provision, 25 reputable county citizens may sign a written request to that effect and submit it to the district attorney for the county, who must then direct the sheriff to make such an investigation and report. *Ibid.*

2. Under Alabama law, the county sheriff exercises final policymaking authority in regard to county law enforcement activities

With regard to the exercise of authority, Alabama law clearly makes the county sheriff the final policymaking authority over law enforcement within his county. Alabama law specifies that "[i]t shall be the duty of sheriffs in their respective counties, by themselves or deputies, to ferret out crime, to appre-

hend and arrest criminals and, insofar as within their power, to secure evidence of crimes in their counties and to present a report of the evidence so secured to the district attorney or assistant district attorney for the county." Ala. Code § 36-22-3(4) (1991). An Alabama county sheriff has no authority to enforce the law outside of his county, nor does state law identify any other official or entity as authorized to make final policymaking decisions in regard to law enforcement in a particular county.

C. Recognizing that Alabama sheriffs are final policymakers for the county in regard to law enforcement actions is consistent with this Court's decision in *Pembaur* and the rulings by other courts of appeals

In *Pembaur* v. *City of Cincinnati*, 475 U.S. at 483-484 (plurality opinion), the Court noted that a county sheriff's decisions in regard to law enforcement practices generally would give rise to county liability because in that area the sheriff "*is* the official policymaker." 475 U.S. at 483 n.12. The Court approved of the court of appeals' conclusion in *Pembaur* that, under Ohio law, the county sheriff and the prosecutor established county policy in regard to law enforcement practices. *Id.* at 484-485. In reaching that conclusion, the court of appeals in *Pembaur* had relied on facts strikingly similar to the facts in the instant case. See *Pembaur* v. *City of Cincinnati*, 746 F.2d 337, 341 (6th Cir. 1984) (citing fact that county residents elect sheriff, county pays sheriff's salary and provides budget for sheriff's office, county provides sheriff with equipment and office necessities, and that sheriffs serve as chief law enforcement officers in each county). The Chambers County Sheriff similarly should be deemed to have final policymaking

authority for the county in regard to law enforcement practices so that the county is liable for the unconstitutional exercise of such authority by the sheriff.

The First, Fifth, and Ninth Circuits have reached the same conclusion after examining similar statutory schemes in other states. As the First Circuit wrote in *Blackburn* v. *Snow*, 771 F.2d 556, 571 (1985), where the sheriff is "the county official who was elected by the County's voters to act for them and to exercise the powers created by state law," the county is liable under Section 1983 for the sheriff's misconduct. See also *Crane* v. *Texas*, 766 F.2d 193, 195 (5th Cir. 1985) (per curiam) (Texas county may be held liable for the actions of its district attorney where, "much like the county itself, his office is a local entity, created by the State of Texas and deriving its powers from those of the State, but limited in the exercise of those powers to the county, filled by its voters, and paid for with its funds"), cert. denied, 474 U.S. 1020 (1985); *Gobel* v. *Maricopa County*, 867 F.2d 1201, 1208-1209 (9th Cir. 1989) (Arizona county attorney who is elected by county voters may be final policymaker for the county for purposes of establishing county liability). See also, *Turner* v. *Upton County*, 915 F.2d 133 (5th Cir. 1990), cert. denied, 498 U.S. 1069 (1991); *Crowder* v. *Sinyard*, 884 F.2d 804 (5th Cir. 1989), cert. denied, 496 U.S. 924 (1990); *Dotson* v. *Chester*, 937 F.2d 920, 924-932 (4th Cir. 1991). *Lucas* v. *O'Loughlin*, 831 F.2d 232 (11th Cir. 1987), cert. denied, 485 U.S. 1035 (1988).

The contrary ruling by the Seventh Circuit is not persuasive. In *Thompson* v. *Duke*, 882 F.2d 1180, 1187 (1989), cert. denied, 495 U.S. 929 (1990), the

Seventh Circuit held that an Illinois county could not be held liable for the misconduct of its sheriff in his administration of the county jail, because the county board had no independent authority over the jail and "[t]he Sheriff is an independently-elected constitutional officer who answers only to the electorate, not to the Cook County Board of Commissioners." This ruling confuses the question whether a local official has been delegated policymaking authority by another entity (such as the county board), with the question whether the official has obtained that authority without delegation by statutory provision or custom. See *Pembaur*, 475 U.S. at 483. Where an officer has policymaking authority for a governmental entity by virtue of his office and the powers and duties assigned to that office by state law, he is a final policymaker for purposes of Section 1983 liability of the entity without regard to whether he shares that authority with any other official or entity. See *Blackburn*, 771 F.2d at 571 (county liable for sheriff's actions without regard to whether other officials were involved, or whether other officials failed properly to oversee sheriff).[7]

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[7] The reasoning by the court of appeals below also appears to reflect some confusion in regard to the means by which the sheriff could be vested with final policymaking authority for the county. The court of appeals' decision relies solely on the fact that there is no express state statute or decision denoting the county as a law enforcement authority. This Court has made clear, however, that consideration of state statutory and decisional law does not end the matter and that a court must also consider state custom and usage regarding the locus of county policymaking authority. *Jett*, 491 U.S. at 737.

Indeed, the court of appeals recognized the necessity of considering state custom and usage in regard to the city's appeal of its summary judgment motion in which it claimed that the police chief was not the final decisionmaker for city law enforcement. In declining to exercise pendent jurisdiction because of the state of the record, the court explained that to "identify those individuals whose decisions represent the official policy of the local governmental unit," the trial court should examine not only the "relevant positive law, including ordinances, rules and regulations, *but also the relevant customs and practices having the force of law.*" Pet. App. 37a, quoting *Mandel* v. *Doe*, 888 F.2d 783, 793 (11th Cir. 1989).

Thus, even if the court of appeals' interpretation of state statutory law had been correct, summary judgment in favor of the county defendants would not have been appropriate because remand to the trial court would have been required for consideration of state custom and usage. Cf. Pet. App. 72a (district court emphasizing that its ruling on whether sheriff is final policy maker for county was based on the plaintiffs' evidence thus far, but that the parties would have an opportunity to address the issue again before the case went to the jury).

CONCLUSION

The judgment of the court of appeals should be vacated and the case remanded for further proceedings.

Respectfully submitted.

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